

No. 15818 ✓

United States
Court of Appeals
for the Ninth Circuit

PACIFIC GAMBLE-ROBINSON CO., a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington,
Northern Division.

FILED

JAN 22 1938

PAUL P. WESTERN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States District Court for the Western
District of Washington, Northern Division

No. 4291

PACIFIC GAMBLE ROBINSON CO., a Corpo-
ration,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT FOR REFUND OF TAXES

Comes Now the Plaintiff, by its attorneys, Ryan,
Askren & Mathewson, and complains of the defend-
ant and alleges as follows:

First Count

I.

That the plaintiff, Pacific Gamble Robinson Co.,
at all times hereinafter mentioned was, and now is,
a corporation organized and existing under and by
virtue of the Laws of the State of Delaware; that
plaintiff's principal place of business is Seattle,
King County, State of Washington, within the
Western District of Washington, and within the
territorial jurisdiction of this Court; that this Court
has jurisdiction of this cause under the provisions
of Title 28, United States Code, Section 1346
(a) (1).

II.

That at all times herein mentioned, plaintiff conducted certain of its business in the State of Washington and other western states under the trade name and style of Pacific Fruit & Produce Co., and in the midwestern part of the United States under the trade name and style of Gamble-Robinson Company.

III.

That plaintiff has a claim against the defendant for the recovery of taxes paid on the transportation of property during a portion of the year 1950, and which taxes were erroneously and illegally collected under and by virtue of Section 3475 of the Internal Revenue Code (Section 620 (a), Revenue Code of 1942).

IV.

That during the period July through October, 1950, plaintiff had occasion to have certain of its products shipped to various points in the United States over the lines of certain carriers by rail; that during the period in question plaintiff's said products were shipped over the lines of fifteen (15) rail carriers, and the plaintiff paid said carriers in the Dominion of Canada transportation charges totaling \$2,683,949.64, of which amount the sum of \$78,937.17 represented the 3% tax imposed by Section 3475 of the Internal Revenue Code; that a recapitulation of said transportation charges, the transportation taxes paid thereon, the names of the fifteen (15) rail carriers to whom such charges and taxes were paid by plaintiff, the places in Canada

where plaintiff paid said charges and taxes, and the Collectors (now District Directors) of Internal Revenue of the Collection Districts to whom said carriers in turn paid said taxes, is set forth on Exhibit "A" attached hereto and by this reference made a part hereof.

V.

That during the period in question, and for all freight shipments which began prior to November 1, 1950, Section 3475 of the Internal Revenue Code covered the liability and the manner of the payment of the United States tax on the transportation of property, in the following language:

"(a) Tax—There shall be imposed upon the amount paid within the United States (emphasis added) after the effective date of this section for the transportation, on or after such effective date, of property by rail, motor vehicle, water, or air from one point in the United States to another, a tax equal to 3 per centum of the amount so paid, except * * *

"(b) * * *——

"(c) Returns and Payment—The tax imposed by this section shall be paid by the person making the payment subject to the tax. Each person receiving any payment specified in subsection (a) shall collect the amount of the tax imposed from the person making such payment, and shall, on or before the last day of each month, make a return, under oath, for the

preceding month, and pay the taxes so collected to the Collector in the district in which his principal place of business is located, * * *

VI.

That during the period aforesaid, plaintiff paid said transportation charges outside of the United States to said railroad carriers at their respective offices located in the cities of Vancouver and/or Winnipeg and/or Toronto, Canada, and, in addition, said railroad carriers wrongfully demanded and collected from the plaintiff, simultaneously with the collection of said transportation charges, the tax imposed on said charges, and all as set forth in Exhibit "A" attached hereto and made a part hereof; that as said transportation charges were paid outside of the United States, the taxes imposed and paid thereon were erroneously and illegally collected; that except for refunds of small amounts for overcharges received by plaintiff since January 1, 1951, for which plaintiff agrees to account, plaintiff has received no repayment of said taxes, or any part thereof, from any of said railroad carriers or from the defendant, and that plaintiff has not consented to the allowance of any credit or refund to any of said rail carriers.

VII.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue for the First District

of Illinois at Chicago 4, Illinois, the Collection District in which was located the principal place of business of the rail carriers Chicago and Northwestern Railway Company, whereby plaintiff claimed a refund of \$2,824.89, plus interest, representing the transportation taxes paid said rail carrier outside the United States during the period above mentioned; that on October 6, 1955, by direction of the Commissioner of Internal Revenue, said claim for refund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$2,824.89, together with interest as provided by law, that plaintiff is and always has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Second Count

I.

That plaintiff realleges as though fully set forth herein, Paragraphs I through VI of its First Count.

II.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue for the First District of Illinois at Chicago 4, Illinois, the Collection District in which was located the principal place of business of the rail carrier Chicago, Burlington & Quincy Railroad Co., whereby plaintiff claimed a

refund of \$5,326.36, plus interest, representing the transportation taxes paid said rail carrier outside of the United States during the period above mentioned; that on October 6, 1955, by direction of the Commissioner of Internal Revenue, said claim for refund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$5,326.36, together with interest as provided by law; that plaintiff is and always has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Third Count

I.

That plaintiff realleges as though fully set forth herein, Paragraphs I through VI of its First Count.

II.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue, for the First District of Illinois at Chicago 4, Illinois, the Collection District in which was located the principal place of business of the rail carrier Chicago, Milwaukee, St. Paul & Pacific Railroad Company, whereby plaintiff claimed a refund of \$5,507.65, plus interest, representing the transportation taxes paid said rail carrier outside of the United States during the period above mentioned; that on October 6, 1955, by

direction of the Commissioner of Internal Revenue, said claim for refund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$5,507.65, together with interest as provided by law; that plaintiff is and always has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Fourth Count

I.

That plaintiff realleges as though fully set forth herein, Paragraphs I through VI of its First Count.

II.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue, Denver, Colorado, the Collection District in which was located the principal place of business of the rail carrier, The Colorado and Southern Railway Company, whereby plaintiff claimed a refund of \$988.10, plus interest, representing the transportation taxes paid said rail carrier outside of the United States during the period above mentioned; that on April 11, 1955, by direction of the Commissioner of Internal Revenue, said claim for refund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$988.10, together with interest as provided by law; that plain-

tiff is and always has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Fifth Count

I.

That plaintiff realleges as though fully set forth herein, Paragraph I through VI of its First Count.

II.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue, St. Paul 1, Minnesota, the Collection District in which was located the principal place of business of the rail carrier, Great Northern Railway Company, whereby plaintiff claimed a refund of \$12,721.76, plus interest, representing the transportation taxes paid said rail carrier outside of the United States during the period above mentioned; that on October 6, 1955, by direction of the Commissioner of Internal Revenue, said claim for refund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$12,721.76, together with interest as provided by law; that plaintiff is and always has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Sixth Count

I.

That plaintiff realleges as though fully set forth herein Paragraphs I through VI of its First Count.

II.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue, St. Paul 1, Minnesota, the Collection District in which was located the principal place of business of the rail carrier Northern Pacific Railway Company, whereby plaintiff claimed a refund of \$16,697.42, plus interest, representing the transportation taxes paid said rail carrier outside of the United States during the period above mentioned; that on October 6, 1955, by direction of the Commissioner of Internal Revenue, said claim for refund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$16,697.42, together with interest as provided by law; that plaintiff is and always has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Seventh Count

I.

That plaintiff realleges as though fully set forth herein, Paragraphs I through VI of its First Count.

II.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue, San Francisco 2, California, the Collection District in which was located the principal place of business of the rail carrier Southern Pacific Company, whereby plaintiff claimed a refund of \$5,562.17, plus interest, representing the transportation taxes paid said rail carrier outside of the United States during the period above mentioned; that on October 6, 1955, by direction of the Commissioner of Internal Revenue, said claim for refund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$5,562.17, together with interest as provided by law; that plaintiff is and always has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Eighth Count

I.

That plaintiff realleges as though fully set forth herein Paragraphs I through VI of its First Count.

II.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue, Portland 9, Oregon, the

Collection District in which was located the principal place of business of the rail carrier Spokane, Portland and Seattle Railroad Company, whereby plaintiff claimed a refund of \$806.03, plus interest, representing the transportation taxes paid said rail carrier outside of the United States during the period above mentioned; that on October 6, 1955, by direction of the Commissioner of Internal Revenue, said claim for refund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$806.03, together with interest as provided by law; that plaintiff is and always has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Ninth Count

I.

That plaintiff realleges as though fully set forth herein Paragraphs I through VI of its First Count.

II.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue, Omaha 2, Nebraska, the Collection District in which was located the principal place of business of the rail carrier Union Pacific Railroad Company, whereby plaintiff claimed a refund of \$9,633.71, plus interest, representing the transportation taxes paid said rail

carrier outside of the United States during the period above mentioned; that on December 23, 1954, by direction of the Commissioner of Internal Revenue, said claim for refund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$9,633.71, together with interest as provided by law; that plaintiff is and always has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Tenth Count

I.

That plaintiff realleges as though fully set forth herein Paragraphs I through VI of its First Count.

II.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue for the First District of Illinois, Chicago 4, Illinois, the Collection District in which was located the principal place of business of the rail carrier Illinois Central Railroad, whereby plaintiff claimed a refund of \$1,915.51, plus interest, representing the transportation taxes paid said rail carrier outside of the United States during the period above mentioned; that on October 6, 1955, by direction of the Commissioner of Internal Revenue, said claim for re-

fund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$1,915.51, together with interest as provided by law; that plaintiff is and always has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Eleventh Count

I.

That plaintiff realleges as though fully set forth herein Paragraphs I through VI of its First Count.

II.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue, St. Paul 1, Minnesota, the Collection District in which was located the principal place of business of the rail carrier Chicago, St. Paul, Minneapolis & Omaha Railway Company, whereby plaintiff claimed a refund of \$7,251.39, plus interest, representing the transportation taxes paid said rail carrier outside of the United States during the period above mentioned; that on October 6, 1955, by direction of the Commissioner of Internal Revenue, said claim for refund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$7,251.39, together with interest as provided by law; that plaintiff is and al-

ways has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Twelfth Count

I.

That plaintiff realleges as though fully set forth herein Paragraphs I through VI of its First Count.

II.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue for the First District of Illinois at Chicago 4, Illinois, the Collection District in which was located the principal place of business of the rail carrier Chicago Great Western Railway Company, whereby plaintiff claimed a refund of \$2,885.88, plus interest, representing the transportation taxes paid said rail carrier outside of the United States during the period above mentioned; that on October 6, 1955, by direction of the Commissioner of Internal Revenue, said claim for refund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$2,885.88, together with interest as provided by law; that plaintiff is and always has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Thirteenth Count

I.

That plaintiff realleges as though fully set forth herein Paragraphs I through VI of its First Count.

II.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue for the First District of Illinois at Chicago 4, Illinois, the Collection District in which was located the principal place of business of the rail carrier Chicago, Rock Island and Pacific Railroad Company, whereby plaintiff claimed a refund of \$2,672.22, plus interest, representing the transportation taxes paid said rail carrier outside of the United States during the period above mentioned; that on October 6, 1955, by direction of the Commissioner of Internal Revenue, said claim for refund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$2,672.22, together with interest as provided by law; that plaintiff is and always has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Fourteenth Count

I.

That plaintiff realleges as though fully set forth herein Paragraphs I through VI of its First Count.

II.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue, St. Paul 1, Minnesota, the Collection District in which was located the principal place of business of the rail carrier Minneapolis, St. Paul & Sault Ste. Marie R.R. Co., whereby plaintiff claimed a refund of \$1,392.24, plus interest, representing the transportation taxes paid said rail carrier outside of the United States during the period above mentioned; that on October 6, 1955, by direction of the Commissioner of Internal Revenue, said claim for refund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$1,392.24, together with interest as provided by law; that plaintiff is and always has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Fifteenth Count

I.

That plaintiff re-alleges as though fully set forth herein, Paragraphs I through VI of its First Count.

II.

That pursuant to the provisions of the Internal Revenue Code, plaintiff on June 28, 1954, duly filed a claim for refund, Form 843, with the District Director of Internal Revenue, St. Paul 1, Minne-

sota, the Collection District in which was located the principal place of business of the rail carrier, The Minneapolis & St. Louis Railway Company, whereby plaintiff claimed a refund of \$2,751.84, plus interest, representing the transportation taxes paid said rail carrier outside of the United States during the period above mentioned; that on October 6, 1955, by direction of the Commissioner of Internal Revenue, said claim for refund was by letter rejected in full, and, by virtue thereof, defendant has become and is indebted to plaintiff in said sum of \$2,751.84, together with interest as provided by law; that plaintiff is and always has been the sole owner of the claim referred to herein, and has not assigned or transferred the whole or any part thereof or interest therein.

Wherefore, plaintiff prays for judgment against the defendant as follows:

(1) Upon each of its fifteen (15) counts herein, in the following amounts:

(a)	First Count	\$ 2,824.89
(b)	Second Count	\$ 5,326.36
(c)	Third Count	\$ 5,507.65
(d)	Fourth Count	\$ 988.10
(e)	Fifth Count	\$12,721.76
(f)	Sixth Count	\$16,697.42
(g)	Seventh Count	\$ 5,562.17
(h)	Eighth Count	\$ 806.03
(i)	Ninth Count	\$ 9,633.71
(j)	Tenth Count	\$ 1,915.51
(k)	Eleventh Count	\$ 7,251.39

- (l) Twelfth Count\$ 2,885.88
- (m) Thirteenth Count\$ 2,672.22
- (n) Fourteenth Count\$ 1,392.24
- (o) Fifteenth Count\$ 2,751.84

(2) Together with interest on each of said above amounts as provided by law in like cases;

(3) Together with its costs and disbursements herein to be taxed; and

(4) Together with such other and further relief as is just in the premises.

RYAN, ASKREN & MATHEW-
SON

By /s/ LAURANCE S. CARLSON,
Of Attorneys for Plaintiff.

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PACIFIC GAMBLE ROBINSON CO.
RECAPITULATION OF TRANSPORTATION TAXES PAID

IN CANADA

(Refunds for Overcharges Accounted for through December 31, 1930)

	<u>PACIFIC FRUIT AND PRODUCE CO.</u>			<u>GAMBLE ROBINSON CO.</u>			<u>CONSOLIDATION</u>		
	<u>Freight</u>	<u>Tax</u>	<u>Total</u>	<u>Freight</u>	<u>Tax</u>	<u>Total</u>	<u>Freight</u>	<u>Tax</u>	<u>Total</u>
1. CHICAGO AND NORTHWESTERN RAILWAY COMPANY 400 West Madison Street, Chicago 5, Ill. Collector of Internal Revenue First District Illinois, Chicago 4, Illinois									
Spokane City, South Dakota Branch - Vancouver	\$30,880.96	\$918.87	\$31,800.83						
Pacific Fruit and Produce Co. Total	30,880.96	918.87	31,800.83						
Gamble Robinson Co. - all branches - Winnipeg				\$52,835.24	\$1,908.52	\$54,743.76	\$94,416.20	\$2,624.89	\$97,041.09
2. CHICAGO, BURLINGTON & QUINCY RAILROAD CO. 247 West Jackson Blvd., Chicago 5, Ill. Collector of Internal Revenue First District Illinois, Chicago 4, Illinois									
Seattle, Wash. Branch - Vancouver	13,944.86	418.22	14,363.08						
Casper, Wyoming Branch - Vancouver	20,688.85	814.79	21,503.64						
Pacific Fruit and Produce Co. Total	34,633.71	1,233.01	35,866.72						
Gamble Robinson Co. - all branches - Winnipeg				148,142.68	6,268.25	154,410.93	177,770.63	5,328.86	183,099.49
3. CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY 216 West Jackson Blvd., Chicago 5, Ill. Collector of Internal Revenue First District Illinois, Chicago 4, Illinois									
Seattle, Washington Branch - Vancouver	542.70	17.45	560.15						
Port Angeles, Washington Branch - Vancouver	1,674.88	47.22	1,722.10						
Bremerton, Washington Branch - Vancouver	1,007.85	30.14	1,037.99						
Spokane, Washington Branch - Vancouver	121.62	3.66	125.28						
Tacoma, Washington Branch - Vancouver	1,040.61	31.47	1,072.08						
Missoula, Montana Branch - Vancouver	1,453.99	42.82	1,496.81						
Pacific Fruit and Produce Co. Total	5,791.66	173.73	5,965.39						
Gamble Robinson Co. - all branches - Winnipeg				177,688.65	8,232.99	185,921.64	183,488.63	5,607.66	189,096.29
4. THE COLORADO AND SOUTHERN RAILWAY COMPANY C. L. Johnson Building, Denver, Colorado Collector of Internal Revenue, Denver, Colorado Cheyenne, Wyoming Branch - Vancouver	\$2,785.45	\$68.10	\$2,853.55						
Pacific Fruit and Produce Co. Total	2,785.45	68.10	2,853.55						
5. GREAT NORTHERN RAILWAY COMPANY 175 East Fourth Street, St. Paul 1, Minnesota Collector of Internal Revenue 180 East Kellogg Blvd., St. Paul 1, Minnesota									
Seattle, Washington Branch - Vancouver	16,980.64	\$97.98	17,078.62						
Centralia, Washington Branch - Vancouver	45.00	1.29	46.29						
Elko, Washington Branch - Vancouver	186.58	6.94	193.52						
St. Vrain, Washington Branch - Vancouver	1,607.68	66.18	1,673.86						
Montrose, Washington Branch - Vancouver	8,675.09	170.17	8,845.26						
Bremerton, Washington Branch - Vancouver	4,942.88	144.80	5,087.68						
Tacoma, Washington Branch - Vancouver	8,680.37	107.40	8,787.77						
Bellingham, Washington Branch - Vancouver	8,667.63	86.04	8,753.67						
Spokane, Washington Branch - Vancouver	24,808.09	747.09	25,555.18						
Portland, Oregon Branch - Vancouver	187.54	8.62	196.16						

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PACIFIC GAMBLE ROBINSON CO.
RECAPITULATION OF TRANSPORTATION TAXES PAID
IN CANADA

(Returns for Overcharges Accounted for through December 31, 1960)

Page 2

PACIFIC FRUIT AND PRODUCE CO.				GAMBLE ROBINSON CO.			CONSOLIDATION		
	Freight	Tax	Total	Freight	Tax	Total	Freight	Tax	Total
Bend Oregon, Branch - Vancouver	\$ 1,888.78	\$ 47.18	\$ 1,935.96						
Klamath Falls, Oregon Branch - Vancouver	1,067.31	31.71	1,099.02						
Kellogg, Wartana Branch - Vancouver	8,371.23	278.18	8,649.41						
Pacific Fruit and Produce Co. Total	78,744.18	2,181.06	80,925.24						
Gamble Robinson Co. - all branches - Winnipeg				\$381,888.70	\$10,840.74	\$392,729.44	\$424,418.88	\$15,721.78	\$440,140.66
6. NORTHERN PACIFIC RAILWAY COMPANY									
214 and Jackson Street, St. Paul 1, Minnesota Collector of Internal Revenue 180 East Kellogg Blvd., St. Paul 1, Minnesota									
Seattle, Washington Branch - Vancouver	180,887.78	\$,811.80	181,699.58						
Tacoma, Washington Branch - Vancouver	18,732.88	508.81	19,241.69						
Everett, Washington Branch - Vancouver	8,120.78	88.68	8,209.46						
Spokane, Washington Branch - Vancouver	28,747.68	800.84	29,548.52						
Pullman, Washington Branch - Vancouver	4,888.13	140.79	5,028.92						
Yakima, Washington Branch - Vancouver	9,881.04	280.78	10,161.82						
Bellingham, Washington Branch - Vancouver	2,838.81	88.18	2,926.99						
Ellensburg, Washington Branch - Vancouver	888.06	20.88	908.94						
Nedra Weavley, Washington Branch - Vancouver	878.88	11.88	890.76						
Shawto, Washington Branch - Vancouver	1,888.68	88.00	1,976.68						
Centralia, Washington Branch - Vancouver	8,841.28	148.27	8,989.55						
Kelso, Washington Branch - Vancouver	2,088.97	88.79	2,177.76						
Walla Walla, Washington Branch - Vancouver	7,818.88	218.88	8,037.76						
Aberdeen, Washington Branch - Vancouver	8,870.81	287.14	9,157.95						
Pendleton, Oregon Branch - Vancouver	791.08	28.78	819.86						
Medford, Idaho Branch - Vancouver	4,881.84	121.88	5,003.72						
Lewiston, Idaho Branch - Vancouver	1,010.84	80.20	1,091.04						
Missoula, Montana Branch - Vancouver	8,118.88	247.12	8,366.00						
Pacific Fruit and Produce Co. Total	218,781.08	7,138.84	225,919.92						
Gamble Robinson Co. - all branches - Winnipeg				\$17,238.84	\$,887.88	\$18,126.72	\$28,487.88	\$,887.88	\$29,375.76
7. SOUTHERN PACIFIC COMPANY									
68 Market Street, San Francisco 8, California Collector of Internal Revenue - San Francisco 8, Calif.									
Portland, Oregon Branch - Vancouver	88,781.88	2,081.88	90,863.76						
Eugene, Oregon Branch - Vancouver	22,114.88	88.80	22,203.68						
Medford, Oregon Branch - Vancouver	18,404.88	488.11	18,892.99						
Reeseburg, Oregon Branch - Vancouver	8,881.01	208.89	9,089.90						
Corvallis, Oregon Branch - Vancouver	9,788.18	281.87	10,069.05						
Albany, Oregon Branch - Vancouver	8,204.84	247.07	8,451.91						
Salmon, Oregon Branch - Vancouver	28,818.87	888.84	29,707.71						
Coos Bay, Oregon Branch - Vancouver	14,884.88	247.80	15,132.68						
Klamath Falls, Oregon Branch - Vancouver	7,781.87	288.81	8,070.68						
Optima, Wash Branch - Vancouver	1,880.80	47.70	1,928.50						
Pacific Fruit and Produce Co. Total	188,808.17	6,888.17	195,696.34						
Gamble Robinson Co. - all branches - Winnipeg				\$18,803.17	\$,888.17	\$19,691.34	\$28,487.88	\$,888.17	\$29,375.76
8. SPokane, Portland and Seattle Railroad Company									
Post Office Box 818, Portland 7, Oregon Collector of Internal Revenue Customs House, Portland 8, Oregon									
Spokane, Washington Branch - Vancouver	8,888.77	108.07	8,996.84						
Portland, Oregon Branch - Vancouver	18,888.81	848.01	19,736.82						
Astoria, Oregon Branch - Vancouver	8,088.88	181.88	8,270.76						
Pacific Fruit and Produce Co. Total	28,888.84	808.08	29,696.92						
Gamble Robinson Co. - all branches - Winnipeg				\$18,803.17	\$,888.17	\$19,691.34	\$28,487.88	\$,888.17	\$29,375.76

PACIFIC SANKLE ROBINSON CO.
RECAPITULATION OF TRANSPORTATION TAXES PAID

IN CANADA

Page 4

(Refunds for Overcharges Accounted for through December 31, 1960)

9. UNION PACIFIC RAILROAD COMPANY		PACIFIC FRUIT AND PRODUCE CO.			GAMBLE ROBINSON CO.			CONSOLIDATION		
		Freight	Tax	Total	Freight	Tax	Total	Freight	Tax	Total
1014 Bodge Street, Omaha 5, Nebraska										
Collector of Internal Revenue										
1820 Douglas Street, Omaha 5, Nebraska										
Seattle, Washington Branch	- Vancouver	\$7,196.79	\$396.76	\$7,593.55						
		140.08	6.88	150.96						
Yacoma, Washington Branch	- Vancouver	2,086.06	21.08	2,107.14						
Spokane, Washington Branch	- Vancouver	4,350.12	180.86	4,530.98						
Takoma, Washington Branch	- Vancouver	5,016.79	80.80	5,107.59						
Walla Walla, Washington Branch	- Vancouver	16,286.04	\$70.70	16,356.74						
Pullman, Washington Branch	- Vancouver	6,267.90	157.77	6,425.67						
Aberdeen, Washington Branch	- Vancouver	3,135.41	93.76	3,229.17						
Centralia, Washington Branch	- Vancouver	2,241.40	87.66	2,329.06						
Kelso, Washington Branch	- Vancouver	545.82	55.40	601.22						
Portland, Oregon Branch	- Vancouver	11,485.68	\$45.37	11,796.23						
Sahar, Oregon Branch	- Vancouver	2,806.23	\$4.37	2,850.70						
Seas, Oregon Branch	- Vancouver	816.03	24.84	840.87						
La Grande, Oregon Branch	- Vancouver	725.79	22.61	778.40						
Tanderton, Oregon Branch	- Vancouver	1,221.72	87.05	1,308.77						
Boise, Idaho Branch	- Vancouver	26,267.02	786.47	27,053.49						
Wallace, Idaho Branch	- Vancouver	864.89	17.94	882.83						
Lewiston, Idaho Branch	- Vancouver	8,511.11	284.47	8,795.58						
Idaho Falls, Idaho Branch	- Vancouver	19,095.65	\$67.23	19,162.88						
Coastville, Idaho Branch	- Vancouver	6,131.02	104.12	6,235.14						
Twin Falls, Idaho Branch	- Vancouver	7,546.49	217.93	7,764.42						
Cheyenne, Wyoming Branch	- Vancouver	16,151.94	\$45.78	16,197.72						
Rock Springs, Wyoming Branch	- Vancouver	1,234.43	27.06	1,261.49						
Laramie, Wyoming Branch	- Vancouver	8,725.88	61.78	8,807.66						
Rawlins, Wyoming Branch	- Vancouver	6,125.73	128.68	6,254.41						
Salt Lake City, Utah, Branch	- Vancouver	22,806.12	896.58	23,602.70						
Ogden, Utah Branch	- Vancouver	2,067.48	81.94	2,149.42						
Provo, Utah Branch	- Vancouver	9,520.98	\$45.58	9,566.56						
Logan, Utah Branch	- Vancouver	7,944.27	227.29	8,171.56						
Denver, Colorado Branch	- Vancouver	505.19	17.49	522.68						
Pacific Fruit and Produce Co. Total		\$26,219.64	\$,840.71	\$27,060.35						
Gamble Robinson Co. - all branches	- Toronto				\$107,886.84	\$8,284.27	\$116,171.61			
Gamble Robinson Co. - all branches	- Winnipeg				1,187.87	\$4.78	1,192.65			
Gamble Robinson Co. - Total					\$109,074.71	\$8,289.05	\$117,363.76	\$216,419.87	\$8,293.71	\$224,713.58
10. ILLINOIS CENTRAL RAILROAD										
128 West Wacker Place, Chicago 5, Illinois										
Collector of Internal Revenue										
First District Illinois, Chicago 5, Illinois										
Gamble Robinson Co. - all branches	- Toronto				63,844.18	1,218.51	65,062.69	63,844.18	1,218.51	65,062.69
11. CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY										
174 West 4th St., St. Paul, Minnesota										
Collector of Internal Revenue										
180 West College Blvd., St. Paul 1, Minnesota										
Gamble Robinson Co. - all branches	- Winnipeg				\$41,888.51	7,261.59	\$49,150.70	\$41,888.51	7,261.59	\$49,150.70

PACIFIC GAMBLE ROBINSON CO.
RECAPITULATION OF TRANSPORTATION TAXES PAID
IN CANADA

(Refunds for Overcharges Accounted for through December 31, 1960)

	<u>PACIFIC FRUIT AND PRODUCE CO.</u>			<u>GAMBLE ROBINSON CO.</u>			<u>CONSOLIDATION</u>		
	<u>Freight</u>	<u>Tax</u>	<u>Total</u>	<u>Freight</u>	<u>Tax</u>	<u>Total</u>	<u>Freight</u>	<u>Tax</u>	<u>Total</u>
12. <u>CHICAGO GREAT WESTERN RAILWAY COMPANY</u> 309 West Jackson Bldg., Chicago 6, Illinois Collector of Internal Revenue First District Illinois, Chicago 4, Illinois Gamble Robinson Co. - all branches - Winnipeg				\$88,066.10	\$2,858.88	\$90,924.98	\$88,066.10	\$2,858.88	\$90,924.98
13. <u>CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY</u> La Salle Street Station, Chicago, Illinois Collector of Internal Revenue First District Illinois, Chicago 4, Illinois Gamble Robinson Co. - all branches - Winnipeg				88,289.10	2,678.22	90,967.32	88,289.10	2,678.22	90,967.32
14. <u>MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE R.R. CO.</u> First National - See Lane Bldg., Minneapolis, Minn. Collector of Internal Revenue 180 East Kellogg Blvd., St. Paul 1, Minnesota Gamble Robinson Co. - all branches - Winnipeg				46,408.27	1,392.24	47,799.51	46,408.27	1,392.24	47,799.51
15. <u>THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY</u> Northwestern Bank Bldg., Minneapolis, Minn. Collector of Internal Revenue 180 East Kellogg Blvd., St. Paul 1, Minnesota Gamble Robinson Co. - all branches - Winnipeg				88,007.84	2,761.84	90,769.68	88,007.84	2,761.84	90,769.68
GRAND TOTALS	\$812,610.10	\$26,164.28	\$838,774.38	\$1,788,202.37	\$63,772.69	\$1,851,975.06	\$2,608,012.47	\$78,937.17	\$2,686,949.64

RECAPITULATION OF TAX PAID IN EACH COLLECTOR'S DISTRICT

<u>R.R. Reference No.</u>	<u>Collector's District</u>	<u>Amount of Tax Paid</u>
(5) (6) (11) (14) (15)	St. Paul, Minnesota	\$ 40,614.68
(1) (2) (3) (10) (12) (13)	Chicago, Illinois	21,182.61
(9)	Ottawa, Nebraska	9,683.71
(7)	San Francisco, California	2,922.17
(4)	Denver, Colorado	889.10
(8)	Portland, Oregon	808.08
	TOTAL TAX PAID	\$ 76,887.17

[Endorsed]: Filed Dec. 17, 1956.

[Title of District Court and Cause.]

ANSWER

Comes Now the defendant, by its attorney, Charles P. Moriarty, United States Attorney for the Western District of Washington, and for answer to the complaint filed herein admits, denies and alleges:

First Count

1. Admits the allegations contained in paragraph I of the complaint.
2. Admits the allegations contained in paragraph II of the complaint.
3. Denies the allegations contained in paragraph III of the complaint.
4. Defendant is presently without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph IV of the complaint.
5. Admits the allegations contained in paragraph V of the complaint.
6. Defendant is presently without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph VI of the complaint. Denies that any taxes were erroneously or illegally imposed or collected from plaintiff.
7. Defendant is presently without information or knowledge sufficient to form a belief as to the

truth of the allegations contained in paragraph VII of the complaint. Denies it is indebted to plaintiff in the sum of \$2,824.89, or any sum.

Second Count

1. Defendant re-alleges and incorporates herein by reference its answers to paragraphs I through VI of the first count of the complaint.

2. Defendant is presently without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph II of the second count of the complaint. Denies it is indebted to plaintiff in the sum of \$5,326.36, or any sum.

Third Count

1. Defendant re-alleges and incorporates herein by reference its answers to paragraphs I through VI of the first count of the complaint.

2. Defendant is presently without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph II of the third count of the complaint. Denies it is indebted to plaintiff in the sum of \$5,507.65, or any sum.

Fourth Count

1. Defendant re-alleges and incorporates herein by reference its answers to paragraphs I through VI of the first count of the complaint.

2. Defendant is presently without information or knowledge sufficient to form a belief as to the

truth of the allegations contained in paragraph II of the fourth count of the complaint. Denies it is indebted to plaintiff in the sum of \$988.10, or any sum.

Fifth Count

1. Defendant re-alleges and incorporates herein by reference its answers to paragraphs I through VI of the first count of the complaint.

2. Defendant is presently without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph II of the fifth count of the complaint. Denies it is indebted to plaintiff in the sum of \$12,721.76, or any sum.

Sixth Count

1. Defendant re-alleges and incorporates herein by reference its answers to paragraphs I through VI of the first count of the complaint.

2. Defendant is presently without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph II of the sixth count of the complaint. Denies it is indebted to plaintiff in the sum of \$16,697.42, or any sum.

Seventh Count

1. Defendant re-alleges and incorporates herein by reference its answers to paragraphs I through VI of the first count of the complaint.

2. Defendant is presently without information or knowledge sufficient to form a belief as to the

truth of the allegations contained in paragraph II of the seventh count of the complaint. Denies it is indebted to plaintiff in the sum of \$5,562.17, or any sum.

Eighth Count

1. Defendant re-alleges and incorporates herein by reference its answers to paragraphs I through VI of the first count of the complaint.

2. Defendant is presently without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph II of the eighth count of the complaint. Denies it is indebted to plaintiff in the sum of \$806.03, or any sum.

Ninth Count

1. Defendant re-alleges and incorporates herein by reference its answers to paragraphs I through VI of the first count of the complaint.

2. Defendant is presently without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph II of the ninth count of the complaint, except admits that plaintiff filed a claim for refund for \$9,633.71 on July 28, 1954, with the District Director of Internal Revenue at Omaha, Nebraska. Denies defendant is indebted to plaintiff in the sum of \$9,633.71, or any amount.

Tenth Count

1. Defendant re-alleges and incorporates herein

by reference its answers to pargaraphs I through VI of the first count of the complaint.

2. Defendant is presently without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph II of the tenth count of the complaint. Denies it is indebted to plaintiff in the sum of \$1,915.51, or any sum.

Eleventh Count

1. Defendant re-alleges and incorporates herein by reference its answers to pargaraphs I through VI of the first count of the complaint.

2. Defendant is presently without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph II of the eleventh count of the complaint. Denies it is indebted to plaintiff in the sum of \$7,251.39, or any sum.

Twelfth Count

1. Defendant re-alleges and incorporates herein by reference its answers to pargaraphs I through VI of the first count of the complaint.

2. Defendant is presently without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph II of the twelfth count of the complaint. Denies it is indebted to plaintiff in the sum of \$2,885.88, or any sum.

Thirteenth Count

1. Defendant re-alleges and incorporates herein by reference its answers to paragraphs I through VI of the first count of the complaint.

2. Defendant is presently without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph II of the thirteenth count of the complaint. Denies it is indebted to plaintiff in the sum of \$2,672.22, or any sum.

Fourteenth Count

1. Defendant re-alleges and incorporates herein by reference its answers to paragraphs I through VI of the first count of the complaint.

2. Defendant is presently without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph II of the fourteenth count of the complaint. Denies it is indebted to plaintiff in the sum of \$1,392.24, or any sum.

Fifteenth Count

1. Defendant re-alleges and incorporates herein by reference its answers to paragraphs I through VI of the first count of the complaint.

2. Defendant is presently without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph II of the fifteenth count of the complaint. Denies it is indebted to plaintiff in the sum of \$2,751.84, or any sum.

Wherefore, having fully answered the complaint filed herein, defendant moves this Court to dismiss, with prejudice, with costs thereof paid by plaintiffs.

/s/ CHARLES P. MORIARTY,
United States Attorney.

/s/ THOMAS R. WINTER,
Sp. Asst. to Regional Counsel,
Internal Revenue Service.

Receipt of copy acknowledged.

[Endorsed]: Filed February 15, 1957.

[Title of District Court and Cause.]

STIPULATION OF FACTS

It Is Agreed by and between the parties hereto, acting through their respective attorneys, that the facts hereinafter set forth are true, and may be received in evidence, and that the documents attached hereto and made a part hereof are true copies and may be considered to be in evidence herein, subject only to the provisions of paragraph 16, hereinafter.

1. The plaintiff, Pacific Gamble Robinson Co. (hereinafter referred to as "Pacific"), was at all times mentioned herein and it now is a Delaware corporation, with its principal place of business in Seattle, King County, Washington. This Court has jurisdiction of the cause under the provisions of Title 28, United States Code, Sec. 1346(a)(1).

2. At all times mentioned herein, Pacific was engaged in the wholesaling of fresh fruits and vegetables and processed food stuffs in the United States, as well as through subsidiaries in Canada. It conducted its business in the State of Washington and other western states under the trade name and style of "Pacific Fruit & Produce Co.," and in the midwestern part of the United States under the trade name and style of "Gamble-Robinson Company." The main offices of Pacific were maintained at Seattle, Washington, for operations conducted under the name of "Pacific Fruit & Produce Co." and at Minneapolis, Minnesota, for operations conducted under the name of "Gamble-Robinson Company." Branch offices of Pacific Fruit & Produce Company receiving transportation services hereinafter mentioned were maintained in various cities in Colorado, Idaho, part of Montana, part of Nebraska, Oregon, part of South Dakota, Washington, Wyoming and Utah. Branch offices of Gamble-Robinson Company receiving such services were maintained in Iowa, Michigan, Minnesota, parts of Montana and Nebraska, North Dakota, part of South Dakota, Wisconsin, and part of Wyoming.

3. During the period, July through November, 1950, Pacific received from the Chicago and Northwestern Railway Company, Chicago, Burlington & Quincy Railroad Co.; Chicago, Milwaukee, St. Paul & Pacific Railroad Company; The Colorado and Southern Railway Company, Great Northern Railway Company, Northern Pacific Railway Company,

Southern Pacific Company, Spokane, Portland and Seattle Railroad Company; Union Pacific Railroad Company, Illinois Central Railroad, Chicago, St. Paul, Minneapolis & Omaha Railway Company; Chicago Great Western Railway Company, Chicago, Rock Island and Pacific Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie R. R. Co., and The Minneapolis & St. Louis Railway Company (hereinafter referred to collectively as "railroad companies"), freight bills mentioned hereinbelow, representing charges incurred by Pacific upon transportation of produce and other property upon the rail lines of the said railroad companies from one point in the United States to another, which originated between June 30, 1950 and October 31, 1950. In each instance, the said freight bills were incurred by Pacific, were its obligations, and were required to be paid by it. The said transportation took place mainly between producers and packers of produce and foods, and branches of Pacific, although a few shipments were between branches of Pacific. The transportation was mainly in interstate commerce, although a small amount was intrastate, and all payments herein mentioned were made to railroad companies regulated by the Interstate Commerce Commission of the United States. The said freight bills were required, under ICC regulations, to be paid within 96 hours of receipt and were in each instance paid within that time. Each of the railroad companies concerned maintained offices at various places in the United States, including Seattle, Washington; Minneapolis, Minnesota, and

other cities at which Pacific maintained branch offices, at which the said bills could have been paid, and they also maintained offices in Canada, as hereinafter more particularly specified.

4. During the aforesaid period, Pacific paid, in the manner specified in paragraphs 5, 6 and 7, below, freight bills of the said railroad companies on shipments of property originating between June 30, 1950 and October 31, 1950, aggregating \$2,605,-012.47, together with the three per cent (3%) tax specified in Section 3475(a) of the Internal Revenue Code of 1939, as amended, on the said freight bills, totaling \$78,937.17, which Pacific was required to pay by the said railroad companies. The said payments were made to the respective railroad companies in the amounts set forth in plaintiff's Exhibit 1, which is attached hereto.

There are attached hereto plaintiff's Exhibits 2 through 10, which are photocopies of the original checks used to pay certain of the said freight bills, together with the freight bills in payment of which they were issued, and plaintiff's Exhibits 11 through 16, which are photocopies of office copies of checks together with the freight bills in payment of which they were issued. All other checks paid to each of the aforesaid railroad companies and the freight bills in payment of which they were issued were in substantially the same form as the examples pertaining to such railroad company. The said photocopies are true copies which may be received in evidence in lieu of all the originals,

and may be given the same force and probative effect as would be given all the original checks and freight bills pertaining to the payments herein above mentioned. (Retained office copies have been used where originals were not in existence.)

5. Checks and freight bills totaling \$812,810.10, together with the three per cent (3%) transportation tax thereon totaling \$25,164.28 were remitted to the offices of the respective railroad companies in Vancouver, B. C., Canada, in the following manner:

(a) Pacific's office in Seattle, Washington, upon receipt of the above-mentioned freight bills from time to time from the respective branches of Pacific Fruit & Produce Company, as set forth in plaintiff's Exhibit 1, drew checks upon Pacific's account in either the National Bank of Commerce or Seattle-First National Bank, both of Seattle, Washington, payable to the respective railroad companies in the amount of one or more freight bills, including the three per cent (3%) transportation tax thereon.

(b) The said checks, together with the freight bills pertaining thereto, were mailed to representatives of Pacific in care of Slade & Stewart, Ltd., 454 Prior Street, Vancouver, B. C., which was at all times mentioned in the complaint a subsidiary of Pacific. The said representatives of Pacific who resided in Vancouver, B. C., and the dates during which they so served follow:

Robert J. Wood, July 6, 1950, to August 27, 1950.

William Richmond, August 28, 1950, to October 20, 1950.

F. J. Bates, October 31, 1950, to November 16, 1950.

(c) Upon the dates or during the periods stated after, who were instructed and authorized by Pacific to do so on its behalf, their names, the said representatives of Pacific delivered the said freight bills and checks during regular business hours to the duly authorized agents of the railroad companies concerned at their respective offices in Vancouver, B. C.

(d) The said agents of the railroad companies, on behalf of their respective principals, accepted the said checks in Vancouver, B. C., then and there marked the freight bills with an ink stamp, showing the word "Paid," or words to the same effect, the date, and the location of the agent's office in Canada. The agents then returned the receipted bills to the representatives. The said tax so collected was paid by each of the railroad companies concerned to the Collector of Internal Revenue in the district in which it had its principal place of business. The said checks were in due course presented to the banks upon which they were drawn, and were honored by them. At all times after the said checks were issued, and until they were paid, there were sufficient funds in Pacific's account in the said banks to pay them.

(c) Upon the dates or during the periods stated after their names, the said representatives of Pacific, who were instructed and authorized by Pacific to do so on its behalf, delivered the said freight bills and checks during regular business hours to the duly authorized agents of the railroad companies concerned at their respective offices in Vancouver, B. C.

(e) The salaries of the said representatives of Pacific were paid in part by Slade & Stewart, Ltd., by which they were also employed, and in part by Pacific. The aforesaid functions of the said representatives were the only functions performed by them for Pacific.

6. Checks and freight bills totaling \$1,620,321.98, together with the three per cent (3%) tax thereon totaling \$48,619.11, were remitted to the offices of the respective railroad companies in Winnipeg, Manitoba, Canada, in the following manner:

(a) Pacific's office in Minneapolis, Minnesota, upon receipt from time to time of the above-mentioned freight bills from the branch offices of Gamble-Robinson Company, drew checks upon its account in the Northwestern National Bank, Minneapolis, Minnesota, to the respective railroad companies, in the amount of one or more freight bills, including the three per cent (3%) transportation tax thereon.

(b) The said checks, together with the freight bills to which they pertained, were mailed to A. A. McGibbon, P. O. Box 696, Winnipeg, Manitoba, Canada, who resided in the said city. The said A. A. McGibbon was employed by Pacific for the sole purpose of paying the said freight bills.

(c) The said freight bills and checks were delivered by the said A. A. McGibbon, who was instructed and authorized by Pacific to do so on its behalf, during regular business hours to the duly-

authorized agents of the railroad companies concerned at their respective offices in Winnipeg, Manitoba.

(d) The said agents of the railroad companies, on behalf of their respective principals, accepted the said checks in Winnipeg, Manitoba, then and there marked the freight bills with an ink stamp, showing the word "Paid," or words to the same effect, the date, and the location of the agent's office in Canada. The agents then returned the receipted bills to the said A. A. McGibbon. The said tax so collected was paid by each of the railroad companies concerned to the Collector of Internal Revenue in the district in which it had its principal place of business. The said checks were, in due course, presented to the bank upon which they were drawn, and were honored by it. At all times after the said checks were issued, and until they were paid, there were sufficient funds in Pacific's account in the said bank to pay them.

(e) The salary of the said A. A. McGibbon was paid by Pacific.

7. Checks and freight bills totaling \$171,880.39, together with the three per cent (3%) transportation tax thereon totaling \$5,153.78, were remitted to the offices of the respective railroad companies in Toronto, Ontario, Canada, in the following manner:

(a) Pacific's office in Minneapolis, Minnesota, upon receipt from time to time of the above-mentioned freight bills from the branch offices of

Gamble-Robinson Company, drew checks upon its account in the Northwestern National Bank, Minneapolis, Minnesota, to the respective railroad companies, in the amount of one or more freight bills, including the three per cent (3%) transportation tax thereon.

(b) The said checks, together with the freight bills to which they pertained, were mailed to Peter McKercher, P. O. Box 313, Toronto, Ontario, Canada. The said Peter McKercher resided in Toronto, Ontario, and was an employee of Gamble-Robinson, Ltd., a subsidiary of Pacific with offices in Toronto, Ontario.

(c) The said freight bills and checks were delivered by the said Peter McKercher, who was instructed and authorized by Pacific to do so on its behalf, during regular business hours to the duly-authorized agents of the railroad companies concerned, at their respective offices in Toronto, Ontario.

(d) The said agents of the railroad companies, on behalf of their respective principals, accepted the said checks during regular business hours in Toronto, Ontario, then and there marked the freight bills with an ink stamp, showing the word "Paid," or words to the same effect, the date, and the location of the agent's office in Canada. The agents then returned the receipted bills to the said Peter McKercher. The said tax so collected was paid by each of the railroad companies concerned to

the Collector of Internal Revenue in the district in which it had its principal place of business. The said checks were, in due course, presented to the bank upon which they were drawn and were honored by it. At all times after the said checks were issued, and until they were paid, there were sufficient funds in Pacific's account in the said bank to pay them.

(e) The salary of the said Peter McKercher was paid by Gamble-Robinson, Ltd., and the aforesaid functions were performed by him in addition to other duties.

8. Pacific, within the time prescribed by law, to wit, on June 28, 1954, filed with each District Director of Internal Revenue for the Collection District in which any of the aforesaid railroad companies had its principal place of business, as shown in plaintiff's Exhibit 1, a separate claim on Treasury Department Form 843, for refund of the taxes paid by Pacific to such railroad company, asserting that the amounts paid by Pacific to such railroad company for transportation of property were not taxable under Section 3475 of the Internal Revenue Code of 1939, as amended, or at all, and were illegally collected, since such amounts were not paid within the United States. These claims were prepared and filed in the manner and form required by and in accordance with the provisions of Section 3313 of the Internal Revenue Code of 1939, as amended, and Regulation 113, Section 143.61. All of the said claims were denied in full by the Com-

missioner of Internal Revenue, through his designated agents, by notice of disallowance by registered mail to Pacific, in accordance with the provisions of Section 3772(a)(2) of the Internal Revenue Code of 1939. All of the said notices were mailed Pacific on October 6, 1955, except the notice denying the claim for refund of taxes paid to the Union Pacific Railroad Company, which was so mailed on December 23, 1954, and that notice denying the claim for the refund of taxes paid to the Colorado and Southern Railway Company, which was so mailed on April 11, 1955.

9. On December 7, 1942, the Commissioner of Internal Revenue, Guy T. Helvering, issued a Mimeograph letter (MIM.5447, 1942-2 Cum. Bull. p. 280), dated December 7, 1942, to the Collectors of Internal Revenue and others concerned. A photocopy of said Mimeograph letter is Defendant's Exhibit A.

10. On September 2, 1949, the Treasury Department of the United States issued Treasury Department Press Release S-2100, dated Friday, September 2, 1949. A photocopy of said Press Release S-2100 is Defendant's Exhibit B.

11. On April 11, 1950, the acting Commissioner of Internal Revenue, Fred S. Martin, issued a letter ruling MT:M:CTD dated April 11, 1950, to the Northwest Fish Traffic Committee. A photocopy of said letter ruling MT:M:CTD is Defendant's Exhibit C.

12. On June 28, 1950, Deputy Commissioner of Internal Revenue, Charles J. Valaer, issued a letter ruling dated June 28, 1950, to the National Industrial Traffic League. A photocopy of said letter ruling is Defendant's Exhibit D.

13. On July 7, 1950, the Treasury Department of the United States issued Treasury Department Press Release S-2389, dated Friday, July 7, 1950. A photocopy of said Press Release S-2389, dated Friday, July 7, 1950, is Defendant's Exhibit E.

14. No repayment of any of the taxes referred to hereinabove or any part of such taxes ever has been made to plaintiff by any of the railroad companies collecting the same, nor has Pacific otherwise recovered said taxes or any part thereof. Pacific has not consented to the allowance of credit or refund of such taxes, in whole or in part, to any of the said railroad companies.

15. Pacific is and always has been the sole and absolute owner of its aforesaid claims, and no transfer or assignment of said claims or any part thereof has ever been made.

16. The right is reserved by both parties to introduce other and further evidence not inconsistent with this stipulation at the time of trial, and to object to the relevancy or materiality of any of the exhibits hereinabove identified and described. The objection that an exhibit is a copy and not the original is waived. A list of said Exhibits is attached hereto.

17. In the event that Pacific prevails on any of the counts in this proceeding, the parties will submit to the Court an agreed computation of the amount owing by the United States to Pacific, together with interest thereon.

Dated at Seattle, Washington, this 3rd day of September, 1957.

/s/ LAURANCE S. CARLSON,

/s/ DANIEL C. BLOM, of

RYAN, ASKREN &

MATHEWSON,

Attorneys for Plaintiff.

/s/ CHARLES P. MORIARTY,

A.A.B.

United States Attorney;

/s/ ALLEN A. BOWDEN,

Attorney, Dept. of Justice,

Attorneys for Defendants.

LIST OF EXHIBITS

Exhibit No. and Description of Exhibit

No. 1—Recapitulation of transportation taxes paid.

No. 2—Check No. 37601 dated September 25, 1950, drawn by Pacific Fruit & Produce Com-

pany on the National Bank of Commerce, Seattle, Wash., payable to the order of Chicago and North Western Railway Company in the sum of \$452.55, together with two freight bills paid by said check.

No. 3—Check No. 36610 dated September 8, 1950, drawn by Pacific Fruit & Produce Company on the National Bank of Commerce, Seattle, Wash., payable to the order of Chicago, Burlington & Quincy Railroad Company in the sum of \$664.11, together with the freight bills paid by said check.

No. 4—Check No. 24676 dated July 13, 1950, drawn by Pacific Fruit & Produce Company on the Seattle-First National Bank of Seattle, Wash., to the order of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, in the sum of \$532.85, together with freight bill paid by the said check.

No. 5—Check No. 38698 dated October 9, 1950, drawn by Pacific Fruit & Produce Company on the National Bank of Commerce, Seattle, Wash., to the order of the Colorado and Southern Railway Company, in the sum of \$35.02, together with freight bill paid by the said check.

No. 6—Check No. 38983 dated October 12, 1950, drawn by Pacific Fruit & Produce Company on the National Bank of Commerce of Seattle, Wash., to the order of Great

Northern Railway Company, in the sum of \$632.52, together with freight bill paid by the said check.

No. 7—Check No. 38988 dated October 12, 1950, drawn by Pacific Fruit & Produce Company on the National Bank of Commerce of Seattle, Wash., payable to the order of Northern Pacific Railway Company in the sum of \$202.59, together with two freight bills paid by said check.

No. 8—Check No. 38987 dated October 12, 1950, drawn by Pacific Fruit & Produce Company on the National Bank of Commerce of Seattle, Wash., payable to the order of Southern Pacific Company, in the sum of \$13.36, together with two freight bills paid by said check.

No. 9—Check No. 37621 dated September 25, 1950, drawn by Pacific Fruit & Produce Company on the National Bank of Commerce of Seattle, Wash., payable to the order of Spokane, Portland and Seattle Railway Company, in the sum of \$380.45, together with three freight bills paid by said check.

No. 10—Check No. 38984 dated October 12, 1950, drawn by Pacific Fruit & Produce Company on the National Bank of Commerce of Seattle, Wash., payable to the order of Union Pacific Railroad Company in the

sum of \$8.20, together with freight bill paid by said check.

No. 11—Office copy of Check No. 15712 dated July 24, 1950, drawn by Gamble-Robinson Company on the Northwestern National Bank, Minneapolis, Minn., payable to the order of Illinois Central Railroad Company, in the sum of \$373.04, together with office copies of three freight bills paid by said check.

No. 12—Office copy of Check No. 06365 dated October 17, 1950, drawn by Gamble-Robinson Company on the Northwestern National Bank, Minneapolis, Minn., payable to the order of Chicago, St. Paul, Minneapolis & Omaha Railway Co., in the sum of \$374.07, together with office copy of freight bill paid by said check.

No. 13—Office copy of Check No. 15708 dated July 24, 1950, drawn by Gamble-Robinson Company on the Northwestern National Bank, Minneapolis, Minn., payable to the order of Chicago Great Western Railway Company, in the sum of \$173.42, together with office copy of freight bill paid by said check.

No. 14—Office copy of Check No. 01124 dated August 10, 1950, drawn by Gamble-Robinson Company on the Northwestern National Bank, Minneapolis, Minn., payable to the order of Chicago, Rock Island & Pacific

Railroad Co., in the sum of \$786.93, together with office copy of freight bill paid by said check.

No. 15—Office copy of Check No. 15388 dated July 13, 1950, drawn by Gamble-Robinson Company on the Northwestern National Bank, Minneapolis, Minn., payable to the order of Minneapolis, St. Paul & Sault Ste. Marie Railroad Co., in the sum of \$623.90, together with office copy of freight bill paid by said check.

No. 16—Office copy of Check No. 15373 dated July 12, 1950, drawn by Gamble-Robinson Company on the Northwestern National Bank, Minneapolis, Minn., payable to the order of Minneapolis & St. Louis Railway Co., in the sum of \$627.99, together with office copy of freight bill paid by said check.

A—Mimeograph letter (Mim. 5447, 1942-2 Cum. Bull. p. 280) dated December 7, 1942.

B—Treasury Department Press Release S-2100, dated Friday, September 2, 1949.

C—Letter ruling of Acting Commissioner of Internal Revenue, dated April 11, 1950.

D—Letter ruling of Deputy Commissioner of Internal Revenue, dated June 28, 1950.

E—Treasury Department Press Release S-2389, dated Friday, July 7, 1950.

[Endorsed]: Filed September 4, 1957.

In the District Court of the United States for the
Western District of Washington, Northern Division

No. 4291

PACIFIC GAMBLE ROBINSON CO., a Corpo-
ration,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Before Judge Bowen.

September 6, 1957

COURT'S ORAL OPINION

The Court: Respecting the weight of the Kellogg case (133 F. Supp. 387), the Court of Claims deciding that case is not a District Court of the United States such as this one. That court is a court set up by the Congress with a very specialized—a very important—jurisdiction under which that court specializes in the adjudication of claims by and against the Government of the United States. It has had vast experience in that field, which includes the interpretation of tax laws such as the one on which the claims in this action are based.

It is a very risky matter at best for this Court, in the absence of other controlling authority, to knowingly decline to follow the pertinent rulings of the Court of claims in a case involving a tax refund claim against the United States, especially

when such rulings are made by the Court of Claims in a tax refund case involving this very same tax statute (26 U.S.C.A. §3475(a)) and facts very similar to those in the case now before this Court.

Although one of the necessary 3-majority of the judges in the Kellogg case rested his concurrence with the majority ruling on the ground that the "payment" in Canada by checks on banks in the United States was a payment in the United States, the majority opinion sets out the Senate (legislative) Report on the Bill providing for statutory amendment that the Government's construction of the Statute on which was based the Government's exaction of the tax in that case was without the amendment the correct construction—in effect, that the tax was payable even if the transportation charges were in fact paid in Canada. With that Senate Report and construction this Court agrees for the reasons set out in the majority opinion in the Kellogg case.

In this case this Court feels impelled to apply the rule laid down in the Kellogg case by the Court of Claims, and also the construction of the statute approved by the Senate (legislative) Report set out in the majority opinion in that case.

Being so minded, it is the opinion, finding, conclusion and decision of the Court that the true and lawful meaning of this statute does not validate the escape of the taxpayer from liability for the tax here in question by this deviation on their part in

selecting a non-tax place for making payment of the freight charges on which were computed the taxes sought to be refunded by this litigation.

Therefore, the plaintiff should take nothing by its complaint in this action and the same should be dismissed with taxable costs in favor of the defendant.

[Endorsed]: Filed September 16, 1957.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came on for trial before the Court at Seattle, Washington, on September 6, 1957. Plaintiff appeared by Ryan, Askren & Mathewson, and was represented in court by Daniel C. Blom; and the defendant appeared by Charles P. Moriarty, United States Attorney for the Western District of Washington, and was represented in court by Allen A. Bowden, Attorney, Department of Justice, and Thomas R. Winter, Special Assistant to the Regional Counsel, Internal Revenue Service.

The Court, having considered the Stipulation of Facts, and evidence and exhibits introduced by the parties, and the arguments and briefs of counsel, and being fully advised in the premises, and having heretofore rendered an oral opinion, now finds the

facts herein and states its conclusions of law as follows:

Findings of Fact

1. The plaintiff, Pacific Gamble Robinson Co. (hereinafter referred to as "Pacific"), was at all times mentioned herein and it now is a Delaware corporation, with its principal place of business in Seattle, King County, Washington. This Court has jurisdiction of the cause under the provisions of Title 28, United States Code, Sec. 1346(a)(1).

2. At all times mentioned herein, Pacific was engaged in the wholesaling of fresh fruits and vegetables and processed foodstuffs in the United States, as well as through subsidiaries in Canada. It conducted its business in the State of Washington and other western States under the trade name and style of "Pacific Fruit & Produce Co.," and in the mid-western part of the United States under the trade name and style of "Gamble-Robinson Company." The main offices of Pacific were maintained at Seattle, Washington, for operations conducted under the name of "Pacific Fruit & Produce Co." and at Minneapolis, Minnesota, for operations conducted under the name of "Gamble-Robinson Company." Branch offices of Pacific Fruit & Produce Company receiving transportation services hereinafter mentioned were maintained in various cities in Colorado, Idaho, part of Montana, part of Nebraska, Oregon, part of South Dakota, Washington, Wyoming and Utah. Branch offices of Gamble-Robinson Company receiving such services were maintained in

tiff's Exhibits 11 through 16 herein are photo-copies of office copies of checks together with the freight bills in payment of which they were issued. All other checks paid to each of the aforesaid railroad companies and the freight bills in payment of which they were issued were in substantially the same form as the examples pertaining to such railroad company. The said photo-copies are true copies which were received in evidence in lieu of all the originals, and are given the same force and probative effect as would be given all the original checks and freight bills pertaining to the payments hereinabove mentioned. (Retained office copies have been used where originals were not in existence.)

5. Checks and freight bills totaling \$812,810.10, together with the three per cent (3%) transportation tax thereon totaling \$25,164.28 were remitted to the offices of the respective railroad companies in Vancouver, B. C., Canada, in the following manner:

(a) Pacific's office in Seattle, Washington, upon receipt of the above-mentioned freight bills from time to time from the respective branches of Pacific Fruit & Produce Company, as set forth in plaintiff's Exhibit 1, drew checks upon Pacific's account in either the National Bank of Commerce or Seattle-First National Bank, both of Seattle, Washington, payable to the respective railroad companies in the amount of one or more freight bills, including the three per cent (3%) transportation tax thereon.

(b) The said checks, together with the freight bills pertaining thereto, were mailed to representatives of Pacific in care of Slade & Stewart, Ltd., 454 Prior Street, Vancouver, B. C., which was at all times mentioned in the complaint a subsidiary of Pacific. The said representatives of Pacific who resided in Vancouver, B. C., and the dates during which they so served follow:

Robert J. Wood, July 6, 1950, to August 27, 1950; William Richmond, August 28, 1950, to Oct. 20, 1950; F. J. Bates, October 31, 1950, to November 16, 1950.

(c) Upon the dates or during the periods stated after their names, the said representatives of Pacific delivered the said freight bills and checks during regular business hours to the duly authorized agents of the railroad companies concerned at their respective offices in Vancouver, B. C.

(d) The said agents of the railroad companies, on behalf of their respective principals, accepted the said checks in Vancouver, B. C., then and there marked the freight bills with an ink stamp, showing the word "Paid," or words to the same effect, the date, and the location of the agent's office in Canada. The agents then returned the receipted bills to the representatives. The said tax so collected was paid by each of the railroad companies concerned to the Collector of Internal Revenue in the district in which it had its principal place of business. The said checks were in due course presented to the banks upon which they were drawn, and were hon-

ored by them. At all times after the said checks were issued, and until they were paid, there were sufficient funds in Pacific's account in the said banks to pay them.

(e) The salaries of the said representatives of Pacific were paid in part of Slade & Stewart, Ltd., by which they were also employed, and in part by Pacific. The aforesaid functions of the said representatives were the only functions performed by them for Pacific.

6. Checks and freight bills totaling \$1,620,321.98, together with the three per cent (3%) tax thereon totaling \$48,619.11, were remitted to the offices of the respective railroad companies in Winnipeg, Manitoba, Canada, in the following manner:

(a) Pacific's office in Minneapolis, Minnesota, upon receipt from time to time of the above-mentioned freight bills from the branch offices of Gamble-Robinson Company, drew checks upon its account in the Northwestern National Bank, Minneapolis, Minnesota, to the respective railroad companies, in the amount of one or more freight bills, including the three per cent (3%) transportation tax thereon.

(b) The said checks, together with the freight bills to which they pertained, were mailed to A. A. McGibbon, P.O. Box 697, Winnipeg, Manitoba, Canada, who resided in the said city. The said A. A. McGibbon was employed by Pacific for the sole purpose of paying the said freight bills.

(c) The said freight bills and checks were delivered by the said A. A. McGibbon during regular business hours to the duly authorized agents of the railroad companies concerned at their respective offices in Winnipeg, Manitoba.

(d) The said agents of the railroad companies, on behalf of their respective principals, accepted the said checks in Winnipeg, Manitoba, then and there marked the freight bills with an ink stamp, showing the word "Paid," or words to the same effect, the date, and the location of the agent's office in Canada. The agents then returned the receipted bills to the said A. A. McGibbon. The said tax so collected was paid by each of the railroad companies concerned to the Collector of Internal Revenue in the district in which it had its principal place of business. The said checks were, in due course, presented to the bank upon which they were drawn, and were honored by it. At all times after the said checks were issued, and until they were paid, there were sufficient funds in Pacific's account in the said bank to pay them.

(e) The salary of the said A. A. McGibbon was paid by Pacific.

7. Checks and freight bills totaling \$171,880.39, together with the three per cent (3%) transportation tax thereon totaling \$5,153.78, were remitted to the offices of the respective railroad companies in Toronto, Ontario, Canada, in the following manner:

(a) Pacific's office in Minneapolis, Minnesota, upon receipt from time to time of the above-mentioned freight bills from the branch offices of Gamble-Robinson Company, drew checks upon its account in the Northwestern National Bank, Minneapolis, Minnesota, to the respective railroad companies, in the amount of one or more freight bills, including the three per cent (3%) transportation tax thereon.

(b) The said checks, together with the freight bills to which they pertained, were mailed to Peter McKercher, P.O. Box 313, Toronto, Ontario, Canada. The said Peter McKercher resided in Toronto, Ontario, and was an employee of Gamble-Robinson, Ltd., a subsidiary of Pacific with offices in Toronto, Ontario.

(c) The said freight bills and checks were delivered by the said Peter McKercher during regular business hours to the duly authorized agents of the railroad companies concerned at their respective offices in Toronto, Ontario.

(d) The said agents of the railroad companies, on behalf of their respective principals, accepted the said checks during regular business hours in Toronto, Ontario, then and there marked the freight bills with an ink stamp, showing the word "Paid," or words to the same effect, the date, and the location of the agent's office in Canada. The agents then returned the receipted bills to the said Peter McKercher. The said tax so collected was paid by each

of the railroad companies concerned to the Collector of Internal Revenue in the district in which it had its principal place of business. The said checks were, in due course, presented to the bank upon which they were drawn and were honored by it. At all times after the said checks were issued, and until they were paid, there were sufficient funds in Pacific's account in the said bank to pay them.

(e) The salary of the said Peter McKercher was paid by Gamble-Robinson, Ltd., and the aforesaid functions were performed by him in addition to other duties.

8. Pacific, within the time prescribed by law, to wit, on June 28, 1954, filed with each District Director of Internal Revenue for the Collection District in which any of the aforesaid railroad companies had its principal place of business, as shown in plaintiff's Exhibit 1, a separate claim on Treasury Department Form 843, for refund of the taxes paid by Pacific to such railroad company, asserting that the amounts paid by Pacific to such railroad company for transportation of property were not taxable under Section 3475 of the Internal Revenue Code of 1939, as amended, or at all, and were illegally collected, since such amounts were not paid within the United States. These claims were prepared and filed in the manner and form required by and in accordance with the provisions of Section 3313 of the Internal Revenue Code of 1939, as amended, and Regulation 113, Section 143.61. All of the said claims were denied in full by the Commissioner of Internal Revenue, through his designated agents, by notice of

disallowance by registered mail to Pacific, in accordance with the provisions of Section 3772(a)(2) of the Internal Revenue Code of 1939. All of the said notices were mailed Pacific on October 6, 1955, except the notice denying the claim for refund of taxes paid to the Union Pacific Railroad Company, which was so mailed on December 23, 1954, and that notice denying the claim for the refund of taxes paid to the Colorado and Southern Railway Company, which was so mailed on April 11, 1955.

9. On December 7, 1942, the Commissioner of Internal Revenue, Guy T. Helvering, issued a Mimeograph letter (Mim. 5447, 1942-2 Cum. Bull. p. 280), dated December 7, 1942, to the Collectors of Internal Revenue and others concerned. A photocopy of said Mimeograph letter is Defendant's Exhibit A-1.

10. On September 2, 1949, the Treasury Department of the United States issued Treasury Department Press Release S-2100, dated Friday, September 2, 1949. A photocopy of said Press Release S-2100 is Defendant's Exhibit A-2.

11. On April 11, 1950, the acting Commissioner of Internal Revenue, Fred S. Martin, issued a letter ruling MT:M:CTD, dated April 11, 1950, to the Northwest Fish Traffic Committee. A photocopy of said letter ruling MT:M:CTD is Defendant's Exhibit A-3.

12. On June 28, 1950, Deputy Commissioner of Internal Revenue, Charles J. Valaer, issued a letter

ruling dated June 28, 1950, to the National Industrial Traffic League. A photocopy of said letter ruling is Defendant's Exhibit A-4.

13. On July 7, 1950, the Treasury Department of the United States issued a Treasury Department Press Release S-2389, dated Friday, July 7, 1950. A photo-copy of said Press Release S-2389, dated Friday, July 7, 1950, is Defendant's Exhibit A-5.

14. No repayment of any of the taxes referred to hereinabove or any part of such taxes ever has been made to plaintiff by any of the railroad companies collecting the same, nor has Pacific otherwise recovered said taxes or any part thereof. Pacific has not consented to the allowance of credit or refund of such taxes, in whole or in part, to any of the said railroad companies.

15. Pacific is and always has been the sole and absolute owner of its aforesaid claims, and no transfer or assignment of said claims or any part thereof has ever been made. The copy of Transcript of "Court's Oral Opinion" herein filed this day is hereby referred to and made part hereof.

Conclusions of Law

I.

The Court has jurisdiction of the parties and subject matter of this action.

II.

The plaintiff was required by Section 3475(a) of the Internal Revenue Code of 1939 to pay trans-

portation taxes on shipments of property which were made entirely within the United States, and the opinion, findings and conclusions, and the decision of the Court announced September 6, 1957, herein, and the whole thereof, are hereby incorporated as a part of these findings and conclusions.

III.

The transportation taxes imposed by Section 3475(a) of the Internal Revenue Code of 1939 were legally imposed and collected from plaintiff, and judgment should be entered for the defendant, and for costs to be fixed by the Clerk.

Done in Open Court this 16th day of September, 1957.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented by:

/s/ THOMAS R. WINTER.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 16, 1957.

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision

Civil Action No. 4291

PACIFIC GAMBLE-ROBINSON CO., a Corpo-
ration,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

This case came on for trial before the Court at Seattle, Washington, on September 6, 1957. Plaintiff appeared by Ryan, Askren & Mathewson, and was represented in court by Daniel C. Blom; and the defendant appeared by Charles P. Moriarty, United States Attorney for the Western District of Washington, and was represented in court by Allen A. Bowden, Attorney, Department of Justice, and Thomas R. Winter, Special Assistant to the Regional Counsel, Internal Revenue Service.

The Court, having considered the Stipulation of Facts, and evidence and exhibits introduced by the parties, and the arguments and briefs of counsel, and being fully advised in the premises, and having heretofore rendered an oral opinion, and the Court having entered its Findings of Fact and Conclusions of Law herein, it is in conformity therewith

Ordered, Adjudged and Decreed that plaintiff take nothing from this action, and its complaint be dis-

missed with prejudice, and that judgment be entered for the defendant herein and for its costs hereby taxed in the sum of \$20.00.

Done in Open Court this 16th day of September, 1957.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented by:

/s/ THOMAS R. WINTER.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 16, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Pacific Gamble-Robinson Co., a Delaware corporation, the plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in the above-entitled cause in favor of the defendant the United States of America on September 16, 1957.

RYAN, ASKREN &
MATHEWSON,

/s/ LAURANCE S. CARLSON,

/s/ DANIEL C. BLOM,

Attorneys for Appellant.

[Endorsed]: Filed Nov. 8, 1957.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That we, Pacific Gamble-Robinson Co., a Delaware corporation, as principal, and Hartford Accident & Indemnity Company, as surety, are held and firmly bound unto the United States of America, the defendant herein, in the full and just sum of Two Hundred Fifty Dollars (\$250), to be paid to the said the United States of America, its successors or assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Whereas, on September 16, 1957, in the above-entitled Court and cause, a judgment was rendered in favor of the defendant the United States of America and against the plaintiff Pacific Gamble-Robinson Co., and the said Pacific Gamble-Robinson Co. having filed a notice of appeal from such judgment to the United States Court of Appeals for the Ninth Circuit;

Now, Therefore, the condition of this obligation is such that if the said Pacific Gamble-Robinson Co. shall prosecute said appeal to effect and shall pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as the said Court of Appeals may award against the said Pacific Gamble-Robinson Co. if the judgment is modified, then this

obligation to be void; otherwise to remain in full force and effect.

Sealed with our seals and dated this 5th day of November, 1957.

PACIFIC GAMBLE-ROBIN-
SON CO.,

By /s/ R. MILLER,

Its Executive Vice President,
Principal.

[Seal]

HARTFORD ACCIDENT &
INDEMNITY COMPANY,

By /s/ D. M. ADAMS,

Attorney-in-Fact, Surety.

[Endorsed]: Filed Nov. 8, 1957.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

The points on which the appellant, Pacific Gamble-Robinson Co., intends to rely in connection with its appeal from the judgment entered in this action on September 16, 1957, are as follows:

1. Section 3475(a) of the Internal Revenue Code of 1939, as in effect prior to November 1, 1950, in plain and unambiguous language, imposed a tax only upon "the amount paid within the United States" for transportation from one point in the United

States to another. It was erroneous for the Court to construe the said statute as imposing the tax upon amounts paid without the United States by appellant upon such transportation, to wit, in Canada, and to conclude as a matter of law that the plaintiff was not entitled to a refund of the tax collected from it on amounts so paid by it.

2. The Court should have concluded as a matter of law that the aforesaid amounts paid for transportation by the plaintiff were not amounts "paid within the United States" within the purview of Section 3475(a) of the Internal Revenue Code of 1939, as amended.

3. The facts, as fully stipulated and as found by the Court, compelled a conclusion that the plaintiff was entitled to recover the tax collected from it in the amount of \$78,937.17, together with interest thereon as provided by law, and did not support the conclusion of the Court that the said tax was properly and lawfully collected.

RYAN, ASKREN &
MATHEWSON,

/s/ LAURANCE S. CARLSON,

/s/ DANIEL C. BLOM,

Attorneys for Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed Dec. 4, 1957.

[Title of District Court and Cause.]

ORDER FOR TRANSMISSION
OF ORIGINAL EXHIBITS

This Matter having come on for hearing on the oral motion of the plaintiff-appellant; and the Court being fully advised:

It Is Hereby Ordered that all the original exhibits in the above-entitled cause be transmitted by the Clerk of this Court to the United States Court of Appeals for the Ninth Circuit, with the appellate record in said cause, so that the same may be considered by said Court in lieu of certified copies thereof.

Done in Open Court this 6th day of December, 1957.

/s/ JOHN C. BOWEN,
Judge.

Presented by:

RYAN, ASKREN &
MATHEWSON,
Attorneys for Plaintiff-
Appellant.

Approved by:

/s/ THOMAS R. WINTER,
Attorneys for Defendant-
Respondent.

[Endorsed]: Filed Dec. 6, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT, TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit and Rule 75(o) FRCP, and designation of counsel, I am transmitting herewith the following original documents in the file dealing with the above-entitled action, including exhibits, as the record on appeal herein to the United States Court of Appeals for the Ninth Circuit at San Francisco, said papers and documents being identified as follows:

1. Complaint, filed Dec. 17, 1956, with Exhibit "A" attached.

4. Answer, filed Feb. 15, 1957.

10. Stipulation of Facts, filed Sept. 4, 1957.

13. Court Reporter's Transcript of Court's Oral Opinion, filed 9-16-57.

15. Findings of Fact and Conclusions of Law, filed Sept. 16, 1957.

16. Judgment, filed Sept. 16, 1957, for Defendant.

18. Notice of Appeal, filed Nov. 8, 1957.

19. Bond for Costs on Appeal, filed 11-8-57.

20. Statement of Points on Which Appellant Intends to Rely, filed 12-4-57.

21. Designation of Contents of Record on Appeal, filed 12-4-57.

22. Order Directing Transmission of Original Exhibits, filed Dec. 6, 1957.

Plaintiff Exhibits numbered 1 to 19, inclusive, and

Defendant Exhibits numbered A-1 to A-5, inclusive.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by appellant for preparation of the record on appeal in this cause, to wit: Filing fee, Notice of Appeal, \$5.00; and that said amount has been paid to me by counsel for the appellant.

Witness my hand and official seal at Seattle this 9th day of December, 1957.

MILLARD P. THOMAS,
Clerk;

By /s/ TRUMAN EAGER,
Chief Deputy.

[Endorsed]: No. 15818. United States Court of Appeals for the Ninth Circuit. Pacific Gamble-Robinson Co., a Corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed December 11, 1957.

Docketed: December 18, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15818

PACIFIC GAMBLE-ROBINSON CO., a Corporation,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

Appellant, Pacific Gamble-Robinson Co., hereby adopts by reference as the Statement of Points on Which Appellant Intends to Rely, the "Statement of Points on Which Appellant Intends to Rely" heretofore filed in the District Court of the United States for the Western District of Washington, Northern Division, and by the Clerk of said Court transmitted to this Court as Document 20 in the above-entitled cause.

RYAN, ASKREN &
MATHEWSON,

LAURANCE S. CARLSON,
DANIEL C. BLOM,

Attorneys for Appellant, Pacific Gamble-Robinson Co.

[Endorsed]: Filed Jan. 7, 1958.

